

CHESAPEAKE BAY LOCAL ASSISTANCE DEPARTMENT

**LOCAL PROGRAM
COMPLIANCE EVALUATION
PROCEDURES AND POLICIES**

September 2002

Among the powers and duties of the Chesapeake Bay Local Assistance Board outlined in §10.1-2103 of the Code of Virginia is the charge to “[t]ake administrative and legal actions to ensure compliance by counties, cities and towns with the provisions of this chapter including the proper enforcement and implementation of, and continual compliance with, this chapter.” The following policies and procedures are to be used by the staff of the Chesapeake Bay Local Assistance Department in conducting the local program compliance reviews necessary to fulfill this charge.

Compliance reviews shall consist of two types: initial and ongoing. The initial compliance review shall be used to determine local program compliance with the Act and Regulations at a given point in time. It will, in effect, be a benchmark. Subsequent reviews shall be based upon the initial compliance findings.

Preparation Activities and Initial Meeting with Locality

1. The locality liaison will review the *Local Program Compliance Evaluation* materials (including the *Local Program Compliance Evaluation Checklist*) and will prepare a set of files to contain the results of the investigation. The use of an established file format will ensure that each liaison’s work is organized in a consistent manner and will facilitate quick access to needed pieces of information. Files to be created include: *General Information; Workplan; Elements of the Local Program; Land Use and Development Criteria; Program Administration and Enforcement; and Field Investigation*. Separate *Field Investigation* folders for each type of development reviewed are to be maintained.
2. The locality liaison will schedule a meeting with the local program contact to introduce the *Checklist* and review the compliance evaluation process. Local program contacts should be encouraged to include other local staff if these staff members play a role in local program administration or enforcement. The *Checklist* is to be sent to the local program contact no less than one month prior to the initial meeting. This will allow the local program contact to identify any data gaps that may exist and to begin compiling information needed for the compliance evaluation.
3. Prior to the initial meeting, the liaison will review the materials already in the possession of the Department and will begin to complete the *Checklist*. The liaison should use the first meeting to ensure that the Department has the most recent versions of the local ordinance, map, and plan.
4. After the initial meeting, the liaison is to prepare a work plan for completing the *Checklist*. The work plan should include data gaps identified and a plan for filling these gaps. The work plan should also include a schedule for follow-up meetings with local staff and a schedule for the required field investigation visits. The work plan will be used not only to track completion of the individual compliance evaluations, but will help staff manage the workflow of the Review Committees and the Board.

Field Investigation Procedures

As part of the compliance review, the liaison will conduct a series of field investigations and will complete a *Compliance Checklist Field Investigation Report* for each development site visited. The types of sites to be visited include: new residential subdivision, new residential lots, new commercial/office construction, lots recorded prior to 1989 on which development has occurred, additions to non-conforming structures, water dependent facilities, shoreline stabilization projects, redevelopment projects (both stand-alone projects and those within a CBLAB-approved IDA), sight line clearing projects, exception sites, and RPA violation sites. Not all types of development sites will exist in all localities, while some sites may serve as an example of more than one type of development.

Liaisons are to develop a list of sites to be visited based on their knowledge of local conditions and issues and are to include this information in their workplan. Sites of complaints or known violations should be inspected. Sites that have been the subject of on-going communication between the locality and the liaison should also be visited. Other sites that may warrant inspection are sites that have been developed under site plans reviewed as grant deliverables. Localities are encouraged to include sites about which they have particular questions or on which particularly innovative measures were used in addressing the Act and the Regulations. In addition to the sites identified above, liaisons will also visit randomly selected sites, based on their knowledge of local conditions and issues. After the sites have been identified, the liaison and the local program contact will complete the *Compliance Field Investigation Report*. Digital photographs of the site are to be taken and included in the locality files.

Review Procedures

The following review procedures are designed to take into account not only the initial phase of the Compliance Review process required under the Act and Regulations, but are also designed to be used in the ongoing review of local programs.

1. Based on a review of the information gathered by the locality, interviews with local staff, completion of the *Local Program Compliance Evaluation Checklist*, and field investigations, the locality liaison, with assistance from other staff, will evaluate each local government program. At the conclusion of the local program review the liaison will review the *Checklist* with the local government contact and provide a copy of the completed *Checklist* to the local contact.

The liaison will prepare a draft *Initial Local Program Compliance Evaluation Staff Report* regarding the local program's compliance with the Act and Regulations. This report will include a staff recommendation as to the compliance of each element of the local program that is reviewed and a statement of the reason(s) behind these recommendations. The report will also include recommendations for local program modifications that the staff feels are

necessary for compliance and recommendations that are desirable for water quality protection but not necessary for compliance. Areas where additional information or clarifications on the local program are needed will also be identified.

The staff will also prepare a draft resolution concerning its findings. The draft resolution will state the authority of the Board for conducting the implementation review, will identify when the staff completed the process and shared the findings with the local government, will list any recommendations for compliance, will establish a compliance deadline(s) if the local program cannot yet be found compliant with the Act and Regulations, and will conclude with a statement as to the resolutions effective date.

The staff will meet with the local program administrator to review the draft staff report and draft resolution prior to the staff report and resolution being sent to the respective Local Area Review Committee.

2. The *Initial Local Program Compliance Evaluation Staff Report* and resolution will be forwarded to the appropriate Area Review Committee and the local government not less than fifteen (15) days prior to the scheduled Area Review Committee meeting. The transmittal letter will notify the local government of its opportunity to address the Committee and offer testimony or exhibits on its own behalf.
3. At its meeting, the Area Review Committee will hear a presentation by Department staff and by representatives of the local government, if in attendance. The Area Review Committee may find it necessary to request additional documentation or testimony from either staff or the local government prior to making a compliance determination.
4. A staff report and resolution, reflecting the review activities and recommendations taken by the appropriate Area Review Committee, will be prepared. The final report and resolution will be sent to the local government no less than twenty (20) days prior to the Chesapeake Bay Local Assistance Board's meeting at which the local program review is to be considered. To facilitate timely Board reviews of local programs, this notification period may be modified in cases where a local government agrees to waive the full 20-day notice requirement.
5. In making a finding on local program compliance, the Board will take into consideration the staff recommendation and analysis, the recommendation of the appropriate Area Review Committee, and the testimony or other exhibits proffered by the local government. The Board may find it necessary to request additional information from either the staff or local government, and may defer its finding until this information has been provided.

6. When the Board determines that no changes are needed in the local program, it will make a finding that the local program implementation complies with the Act and Regulations. The staff will notify the local government of the Board's findings in writing. This will conclude the initial phase of the compliance review process.
7. When the Board determines that changes are needed in the implementation of the local program, the Board may make a finding of noncompliance and allow the local government to complete required modifications within a prescribed period of time. As part of its findings, the Board will determine what changes are necessary for compliance and will set a corrective action deadline. There may be multiple deadlines for corrective action, depending upon the program element(s) under consideration. The staff will notify the local government of the Board's findings and the compliance deadline(s) in writing. This written notice shall also set forth the locality's right to appeal the Board's action.
8. In cases where there are multiple deadlines relating to individual program elements, as each compliance item comes up for review, the liaison shall prepare a memorandum to the Board informing it either that the program element has been adequately addressed or that the program element has not been adequately addressed and setting forth further recommendations for action (including, but not limited to, finding the local program noncompliant with the Act and Regulations).
9. Upon successful completion of all recommendations for compliance, the liaison shall prepare a memorandum to the Board informing it of the local program status and shall prepare a resolution for Board approval confirming program compliance.
10. A finding of compliance relative to a local program element shall not be taken to mean that the Chesapeake Bay Local Assistance Board may not continue to evaluate local program implementation from time to time as changes in policy, regulation or circumstances may warrant.

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